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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1181

RICHARD A. BATTERTON, *et al.*,
Petitioners,

v.

ROBERT FRANCIS, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS

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SUMMARY OF ARGUMENT

The Social Security Act requires states participating in the AFDC-UF public assistance program to grant monetary benefits to the needy children of fathers who are "unemployed (as determined in accordance with standards prescribed by the Secretary [of Health, Education and Welfare]). . . ." 42 U.S.C. §607(a). The Secretary has partially defined "unemployment" to allow a participating state to exclude from AFDC-UF

eligibility children who fathers are ineligible for state unemployment compensation benefits. 45 C.F.R. §233.100(a)(1). Maryland employs this optional definition and has therefore found the respondent claimants, who represent three classes of children whose fathers are ineligible for Maryland unemployment benefits, to be ineligible for AFDC-UF benefits. The claimants contend that the Secretary's regulation contravenes the Social Security Act and is therefore invalid.

Rather than defining "unemployment" in terms of hours worked, money earned, services rendered, or the existence of a current contractual relationship, the Secretary has defined it by eligibility for another income maintenance program which basically turns on the reasons a father lost his last job. Thus, for example, a father who lost his last job due to alleged misconduct is ineligible for Maryland unemployment insurance. The Secretary's definition permits Maryland to make his children also ineligible for AFDC-UF benefits. Consequently, the Secretary has defined the statutory term "unemployment" to include a person out of work due to losing his job for misconduct as being not "unemployed." Because no rational definition could possibly define such a person as not "unemployed," the Secretary has exceeded his congressional mandate and acted invalidly.

Congress' 1967 charge to the Secretary of define "unemployment" in the AFDC-UF program was intended to eliminate the widespread lack of uniformity in AFDC-UF eligibility conditions throughout the nation. Congress sought a uniform, federal, nationwide definition of unemployment in all participating AFDC-UF states. Instead of meeting such congressional demands, the Secretary has abdicated his definitional duty and authorized the states to grant AFDC-UF to

those ineligible for unemployment insurance and to those out of work due to a labor dispute, or to deny either of these classes or their many different subclasses AFDC-UF benefits. The Secretary thereby has permitted a different set of AFDC-UF eligibility standards to exist in each of the roughly 26 states participating in the program. The AFDC-UF application of a child of an unemployed father could therefore be treated in an entirely different fashion by each of these states. Because this result obviously flouts congressional intentions, the Secretary's regulation, for this reason also, clashes with the Social Security Act's dictates.

If these were not reasons enough for the three unanimous courts below to have invalidated the Secretary's regulation, a review of the Act's structure, wording, and legislative history further compels this conclusion. These factors are evaluated in the final section of this Brief.

ARGUMENT

The only remaining live issue in this third appearance of this case before this Court is whether a regulation promulgated by the Secretary of Health, Education, and Welfare in July 1973, 45 C.F.R. §233.100(a)(1), is contrary to 42 U.S.C. §607(a), and therefore invalid. This was the sole issue before the district courts and court of appeals below. The parties agree that, if the regulation is valid, Maryland can deny AFDC-UF benefits to the claimants and their classes. The parties also agree that, if it is not valid, Maryland cannot deny these children AFDC-UF benefits. In the latter situation, the district court's permanent injunction should not be altered. The district courts and the Fourth Circuit have held the regulation, as is relevant to

these cases, to be invalid. For the reasons outlined below, the claimants (respondents) support this position.

A. Because The Secretary Contravened Congress' Mandate By Defining Unemployed Persons As Not Unemployed, His Regulation Is Invalid.

The simplest approach to this case involves no complicated reasoning or resort to legislative history. Because the Social Security Act directs that AFDC-UF benefits be granted to the children of those fathers who are, *inter alia*, "unemployed," and because the Secretary's actions have excluded from this category two classes of people who are clearly "unemployed," *i.e.*, those out of work due to misconduct and voluntarily quitting, the Secretary's regulation is invalid.

Section 407(a) of the Social Security Act, 42 U.S.C. §607(a), requires that states participating in the program must give AFDC-UF to

> a needy child . . . who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father. . . .

The Secretary's regulation, however, has excluded from his definition of "unemployment" persons who in fact are clearly "unemployed," namely, those claimants who are no longer working because they were released from their prior jobs due to their alleged misconduct or due to allegedly quitting these jobs without good reason. *See* 45 C.F.R. §233.100(a)(1) (J. App. 125a).

Addressing this situation in the first district court opinion (*Francis I*), the three-judge court noted:

> A man out of work because he was discharged for cause by his employer *is unemployed*. There can be no two ways about that conclusion.

(J. App. 24a) (emphasis in original). It therefore found the Maryland regulation to invalidly conflict with the then existing H.E.W. regulation which required AFDC-UF benefits to be paid to the children of "unemployed" fathers.

After the H.E.W. regulation was altered to attempt to circumvent *Francis I*, the district court again came to the same result, this time due to the above-quoted mandatory statutory requirement that AFDC-UF benefits be paid to the children of "unemployed" fathers. In *Francis II* the court similarly concluded:

> The statute relates to the unemployment of a father—and a father who is discharged for cause by his employer *is* unemployed. . . . Until the Congress amends the statute, no combination of federal and state regulations may provide that a father who is unemployed is not unemployed.

(J. App. 83a) (emphasis in original).

The district court in *Bethea* similarly applied this seemingly unquestionable logic to the class of persons unemployed due to having voluntarily quit their last job. It found that "a father who voluntarily quits his job is unemployed within the meaning of 42 U.S.C. §607(a)." (J. App. 96a). After reiterating that only a congressional amendment could allow the Secretary to define as employed someone who is clearly unemployed, the court held that the H.E.W. regulation and Maryland rule were invalid as contrary to the federal statute. *Id.*

By adopting on appeal the district court opinions in *Francis II* and *Bethea* as its own (J. App. 103a & 104a), the Fourth Circuit fully embraced this reasoning.

The claimants concede that some ambiguity arises as to whether a person on strike is "unemployed."[1] With respect to the other two classes, however, the statutory command could hardly be more clear. Claimants submit that because the H.E.W. regulation attempts to define as not "unemployed" two groups of persons who obviously are "unemployed," the seven unanimous federal judges to review this case thus far were correct in invalidating the regulation as conflicting with the federal statute.

B. Because He Failed To Promulgate A Uniform Federal Definition Of Unemployment, The Secretary's Regulation Is Invalid.

Although there may be other ambiguities in the legislative history relevant to this case,[2] Congress' intent is perfectly clear on one highly relevant matter: its desire for a standard nationwide definition of "unemployment" established by the Secretary of Health, Education, and Welfare.

Under the original 1961 AFDC-UF enactment, Pub. L. 87-31, §407, 75 Stat. 75 (1961), the definition of who was an "unemployed parent" was left to each participating state. *See, e.g., Macias v. Finch*, 324 F.Supp. 1252, 1256 (N.D. Cal.), *aff'd*, 400 U.S. 913 (1970). In order to correct the injustices incurred due

[1] Maryland, however, has shown no hesitancy in defining strikers as "unemployed" persons. Although strikers are ineligible for state unemployment insurance, they are nevertheless classified as "unemployed": a person cannot receive unemployment benefits in Maryland "for any week [in which] . . . his unemployment is due to a stoppage of work, other than a lockout. . . ." Md. Ann. Code, art. 95A, §6(e) (1969).

[2] *See, e.g., Francis I, supra* (J. App. 23a n. 25).

to the consequent "wide variation in the definitions used by the States,"[3] Congress amended the Act, effective 1968, so that "the definition of unemployment would be made by the Federal Government."[4] Thus, in order to attain "a uniform definition of unemployment throughout the United States,"[5] Congress amended the Act to grant a child's father benefits

[3] H.R. Rep. No. 544, 90th Cong., 1st Sess. 108 (1967), *quoted in Francis I* (J. App. 46a). *See Philbrook v. Glodgett*, 421 U.S. 707, 719 (1975). Then Under Secretary Wilbur Cohen, testifying before the Senate Finance Committee, pointed out a typical situation of three adjoining states where, due to varying definitions of unemployment, only 19 Arizona families were receiving AFDC-UF in May 1967, while at the same time 1600 in Colorado and 880 in Utah were receiving AFDC-UF. Statement before Committee on Finance on H.R. 12089, U.S. Senate, August 22, 1967 (App. 39).

[4] H.R. Rep. No. 544, 90th Cong., 1st Sess. 17 quoted in *Francis II*, (J. App. 85a); *see* Summary of Provisions of H.R. 12080, The "Social Security Amendments of 1967," House Comm. on Ways & Means 13 (Comm. Print 1967) (App. 37); Brief Summary of Major Provisions & Detailed Comparison with Prior Law, The Social Security Amendments of 1967–Public Law 248, 90th Cong., U.S. Senate Comm. on Finance 3 (Comm. Print 1968) ("Federal definition of unemployment") (App. 38); Statement by Wilbur J. Cohen, Under Secretary of H.E.W. before U.S. Sen. Comm. on Finance, Social Security Amendments of 1967 (Aug. 22, 1967) 8 ("Federal definition of unemployment") (App. 39); 113 Cong. Rec. 32592 (Nov. 15, 1967) (Remarks of Sen. Long); *id.* at 32852 (Nov. 16, 1967) (Remarks of Sen. Ribicoff).

[5] S. Rep. No. 744, 90th Cong., 1st Sess. 4 (1967) (App. 37) (Note: the word "unemployment" in the quotation above is printed incorrectly in the Appendix as "employment."); *see* H.R. Rep. No. 544, 90th Cong., 1st Sess. 3 (1967) ("uniform eligibility requirements throughout the United States").

if he had been "unemployed (as defined by the Secretary). . . ."[6]

Congress' 1967 amendment, therefore, provided that AFDC-UF benefits be given to

> a needy child . . . deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father. . . .

42 U.S.C. §607(a).

Rather than promulgating a uniform definition of unemployment, however, the Secretary in July 1973 abdicated his statutory duty by promulgating a regulation that declared that a state's definition of unemployment

> need not include a father whose unemployment results from participation in a labor dispute or who is unemployed by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

45 C.F.R. §233.100(a)(1) (J. App. 125a).

This definition presents each participating state with a multitude of different options as to which of its unemployed fathers can receive AFDC-UF benefits for

[6]H.R. Rep. No. 544, 90th Cong., 1st Sess. 108 (1967); *see* Brief Summary of Major Provisions & Detailed Comparison with Prior Law, The Social Security Amendments of 1967—Public Law 248, 90th Congress, U.S. Senate Comm. on Finance 63 (Comm. Print 1968) ("Unemployment will be defined by the Secretary of Health, Education, and Welfare") (App. 38).

their children.[7] Thus, there could be a different AFDC-UF system operating in each state. A needy child

[7]Under the Secretary's regulation any combination of the three following classes could be excluded from AFDC-UF eligibility by a state: (1) strikers, (2) those engaged in conduct which disqualifies them from receipt of unemployment benefits, and (3) those engaged in conduct which could disqualify them from unemployment benefits. This latter category would presumably apply to the one-third of the working force not covered by state unemployment insurance schemes, *e.g.*, governmental and many agricultural workers. A state could, therefore, disqualify all of these classes, none of these classes, or any combination (just 1, just 2, just 3, 1 plus 2, 2 plus 3, or 1 plus 3). Presumably, even more options could be created if differing types of disqualifying conduct were treated differently, *e.g.*, "misconduct" versus "voluntarily quitting" versus "gross misconduct." *See, e.g.*, Md. Ann. Code, art. 95A, §6 (1969), which lists Maryland's grounds for disqualification.

Colorado, for example, provides for more than twenty separate reasons for disqualification for unemployment compensation:

> (1) quitting because of dissatisfaction with pay, hours of work, or working conditions, where these are not substandard, (2) quitting because of unwarranted dissatisfaction with supervisor, (3) quitting to marry, (4) moving to another area, except for health reasons or to accept a better job, (5) lack of transportation, (6) quitting to seek other work, or to accept a job that is not better than the one quit, (7) insubordination, including deliberate disobedience of a reasonable instruction, refusal or failure to obtain or renew a necessary license, etc., (8) violation of a statute company rule that resulted or could have resulted in serious damage to the employer's property or interests, (9) off-the-job use of liquor or narcotics (other than medical use) to a degree resulting in interference with job performance, (10) any on-the-job use of liquor or narcotics, unless medically prescribed, (11) incarceration for violation of law, or loss of license essential to job through a law violation, (12) theft, (13) assault or threatened assault, (14) wilful neglect or damage to an employer's property or interests, (15) careless or shoddy work, (16) failure to safeguard employer's property, (17) taking unauthorized vacations, (18) refusal to work a different shift, (19) refusal to accept a transfer, (20) returning to school, (21)

(continued)

living in Maryland could be denied subsistence benefits while a similarly situated child in neighboring Virginia could receive these benefits.

By delegating these options to the states, the Secretary acted contrary to congressional intent. The goal of a "uniform definition of unemployment throughout the United States"[8] had been undermined. The goal of a "federal definition of unemployment"[9] had been severely compromised.

The *Francis II* court, admittedly retreating somewhat from the *dicta* in *Francis I*,[10] found that the Secretary's regulation had failed to set national standards for

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(footnote continued from preceding page)
quitting for certain personal reasons, or (22) refusal of suitable work.

Unemp. Ins. Rep. (CCH) ¶3016. Thus, reasons for disqualification in Colorado—*e.g.*, lack of transportation or refusal to work a different shift or to accept a transfer—may not be grounds for disqualification in Maryland. The problem of diversity in programs is further compounded because under the Secretary's regulation a state presumably could select any subgroup of its list of reasons for disqualification for unemployment compensation and deny these groups AFDC-UF benefits. The wide range in periods of disqualification provided for in state unemployment compensation plans could introduce yet another variable into the AFDC-UF program. For a compilation of the many varied state grounds for ineligibility and differing disqualification periods, see Comparison of State Unemployment Laws, U.S. Dept. of Labor, Manpower Administration, Unemployment Insurance Service (Jan. 1972).

[8] *See* references cited in note 5, *supra*.

[9] *See* legislative sources cited in note 4, *supra*.

[10] *Compare* 340 F.Supp. at 367 (J. App. 26a) *with* 379 F.Supp. at 81 (J. App. 85a). It would appear that a primary reason for the district court's shift in position is attributable to the fact that counsel had failed, prior to the briefing of *Francis II*, to provide the court with the full legislative history as it is partially portrayed in notes 3 to 6, *supra*, and accompanying text.

defining unemployment. (J. App. 84a-85a). Instead, it had done what Congress after 1968 was no longer willing to do: allow each state to choose its own variety of "unemployment." The court therefore ruled the H.E.W. regulation invalid and refused to modify its prior injunction.[11] The Fourth Circuit affirmed this reasoning (J. App. 103a).

Maryland's Brief to this Court seeks to make a useful distinction between the Secretary's duty to "prescribe standards" rather than "define" unemployment. (Claimants submit that this is a mere play on words. A "definition" would be composed of "standards." These "standards," in their totality, would equal a "definition." The distinction is uneventful. Of superior importance is the substance of what Congress intended to be achieved. A uniform nationwide AFDC-UF system is surely not achieved by giving states a broad range of optional systems of AFDC-UF benefits depending on each state's own definition of unemployment insurance eligibility. By failing to promulgate uniform standards, the Secretary failed to effect a *standard* AFDC-UF system. It was this additional shortcoming which correctly led the courts below to declare the Secretary's regulation invalid.

C. Congress Intended The Claimant Children To Be AFDC-UF Beneficiaries

Normally, when the plain meaning of Congress' words is understood, there is no need to inquire beyond

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[11] Because the *Bethea* court ruled that H.E.W. could simply not declare an unemployed father to be not unemployed (J. App. 96a), this ground served to invalidate the H.E.W. regulation with respect to fathers who allegedly voluntarily quit their prior jobs, and therefore it was unnecessary for the court to reach this second basis of invalidity.

these words into the legislative history which led to enactment. Therefore, if claimants are convincing on either of their first two arguments, which were adopted by the three courts below, this Court need not reach this additional analysis into what Congress' actions show it intended.

In effect, the Secretary and Maryland are attempting to engraft an additional optional condition of eligibility onto the AFDC-UF program, namely that certain reasons for losing one's past job can disqualify that person's family from future AFDC-UF eligibility. In order to succeed in such a venture, the state carries the burden of establishing "a clear indication that Congress meant the coverage to be optional." *Burns v. Alcala*, 420 U.S. 575, 580 (1975). *See Townsend v. Swank*, 404 U.S. 282, 286 (1971). The claimants will show that, after a review the language of the statute and congressional statements preceeding enactment, no such clear indication can be found.

1. The Words of the Statute

The most obvious reason to negate any such congressional intent stems from the words Congress used in instructing the Secretary to define unemployment. Congress required in 42 U.S.C. §607(a) that "unemployment" be defined, not, as the Secretary would have it, that the past cause for a person's present unemployment be defined.[12] By no stretch of the

[12]The Secretary's preface to his proposed rulemaking, in fact, frankly admits that the proposed change would not be defining unemployment. The Secretary refers to imposing "additional conditions relating to the reason for unemployment. . . ." 38 Fed. Reg. 49 (Jan. 3, 1973). Reasons for unemployment do not comprise a definition of the state of being unemployed itself.

imagination could a person's status regarding "unemployment" be measured by whether a person is eligible for unemployment insurance. A definition of eligibility for unemployment insurance has nothing to do with the variables one would use in defining unemployment.[13] At best, eligibility for unemployment insurance might be seen as relating to the manner in which a worker left his last job. However, the manner in which a person

[13]A review of the federal suggestions for state unemployment programs indicates that the term "unemployed" has always been intended by the federal and state governments to include those out of work due to misconduct or voluntarily quitting, as well as those involved in a labor dispute. The Social Security Act generally left the determination of who would be eligible for unemployment compensation to each state. *See* Larson & Murray, The Development of Unemployment Insurance in the United States, 8 Vand. L. Rev. 181, 189 (1955). The federal government did, however, propose model legislation for the states to adopt for their programs. *See id.* at 196. All states appear to have included a person out of work due to misconduct or quitting as an "unemployed" person and therefore within the ambit of their program. *See* Sanders, Disqualification for Unemployment Insurance, 8 Vand. L. Rev. 307 (1955). These unemployed persons could, however, be temporarily or permanently disqualified from receiving unemployment benefits. *See generally id.* Thus, for example, Maryland's legislature, following the federally proposed model legislation, *see* Brief for Petitioners, *Batterton v. Francis*, Sup. Ct. No. 75-1181 at 28, has decided that: "An individual shall be disqualified for benefits . . . for any week in which his unemployment is due to his having been discharged for gross misconduct . . . ." Md. Ann. Code, art. 95A. §6(b) (1969). Similarly, "for any week [in which] . . . his unemployment is due to a stoppage of work, other than a lockout . . ." a person is disqualified. *Id.* §6(e). *See also id.* §6(a) (voluntary quit). Thus, Maryland clearly labels persons in claimants' classes as "unemployed." The federal model and other states similarly follow this pattern. Unemployment is defined not in terms of how one lost his prior job, but in terms of hours worked and wages earned, true determinants of present unemployment. *See* Williams, Eligibility for Benefits, 8 Vand. L. Rev. 286, 287 (1955).

was terminated from his prior job has nothing to do with his present status regarding unemployment or degree of unemployment.

A second look at the Act reinforces claimants' point. Although 42 U.S.C. §607 makes repeated references to its interrelation with state unemployment insurance schemes, it significantly fails to express any hint that it intended to permit some children of fathers ineligible for unemployment insurance to be denied AFDC-UF benefits. As is developed in the accompanying footnote,[14] Congress took great pains to explain as fully as possible how its AFDC-UF program should interreact with a state's program for unemployment insurance. This extended treatment of unemployment insurance indicates, the claimants submit, that Congress acted to define as fully as possible how unemployment benefit eligibility would affect AFDC-UF eligibility. If Congress had intended that those children of fathers who were disqualified from receiving unemployment insurance by their states could not turn to AFDC-UF benefits in

[14]Section 407 of the Act makes the children of anyone who is receiving unemployment benefits automatically ineligible for AFDC-UF. *See* 42 U.S.C. §607(b)(2)(C)(ii). The obvious reason for this would seem to be an assumption that those families supported by unemployment insurance are already being financially cared for. Also, Congress brought state unemployment laws into play by permitting a father to demonstrate his attachment to the labor force by showing that he had previously been sufficiently employed so as to qualify for state unemployment compensation within the year prior to his application for benefits. *See* 42 *U.S.C.* §607(b)(1)(C)(ii). In addition, the states participating in the AFDC-UF program are required to allow AFDC-UF fathers to register, along with unemployment insurance beneficiaries, in the state public employment offices. *See* 42 U.S.C. §607(b)(2)(C)(i). Finally, a father is allowed to meet the work force attachment requirements of 42 U.S.C. §607(b)(1)(C)(ii) if he performed work not covered by his state's unemployment compensation scheme in sufficient quantity so that if he had been covered he would have been eligible for unemployment benefits. *See* 42 U.S.C. §607(d)(3)(B).

order to attain a subsistence standard of living, would it not have said so? In light of Congress' specific reference to denying AFDC-UF benefits to those who were *eligible* for unemployment benefits, 42 U.S.C. §607(b)(2)(C)(ii), it seems clear that if it had intended the same result for those *ineligible* for unemployment benefits it would have said so. This class of fathers is of sufficient significance so as not to be dismissed as an oversight.

This result is further reinforced by the observation that there is nothing in section 407 of the Social Security Act which is in any way inconsistent with including claimants' classes within the bounds of AFDC-UF eligibility. If a father loses his job due to allegedly voluntarily quitting, for example, the Act is well tailored to both care for his children and prepare him for reentry into the work force.[15] He still can establish eligibility through his prior attachment to the work force, his willingness to accept bona fide offers of employment, and his registration with the state's job referral system. Indeed, a father in this position poses one of the very basic stereotypes intended to be served by section 407.

Thus, the wording of section 407, its structure, and its application all combine to indicate a congressional intention of inclusion of claimants' classes.

2. Legislative Statements

Two significant, although concededly not conclusive, legislative statements and actions support the claimants'

[15]The court in *Francis I* noted the same situation with respect to a striking father, who is also readily accommodated by section 407. *See* 340 F.Supp. at 367-68 (J. App. 27a).

view. First, when the 1961 AFDC-UF legislation which gave states options regarding AFDC-UF eligibility was being debated, Congressman Mills, the legislation's spokesman, in answer to a question of Representative Dominick, explicitly stated that states could grant strikers AFDC-UF benefits if they chose to do so. *See* 107 Cong. Rec. 3766 (Mar. 10, 1961). No one rose to contest this intent. This category of persons typically disqualified from receiving unemployment insurance therefore was intended by Chairman Mills to be eligible for AFDC-UF benefits.

Second, one major reason for the creation of the AFDC-UF program was to eliminate an unfortunate incentive for fathers to desert their families—the only way by which their children could be eligible for the one parent basic AFDC program.[16] The Secretary's regulation clearly undermines this congressional motivation with respect to all of those fathers in claimants' class.

[16]*See* Message of Pres. Kennedy, U.S. Code Cong. & Admn. News, 87th Cong., 1st Sess. 1032-33; 107 Cong. Rec. 3769 (March 10, 1961) (Remarks of Rep. Ryan); *id.* at 3765 (Remarks of Rep. Baldwin):

> It seems to me that the biggest single problem which has been created by the aid-to-needy children program as it exists today is that the actual wording of the present law stimulates the breaking up of homes. . . . It does not seem to me that three youngsters who may be hungry in a home where their father is unemployed should have less consideration by the Federal Government than three youngsters who are hungry in a home where the father has deserted. A father who is unemployed but who still feels a sense of family responsibility should not be penalized as compared to a father who has deserted his family and left the children and his wife on their own resources. In my own mind I cannot distinguish between the children of those two families. For that reason it seems to me that this bill should be passed so that the Congress of the United States will correct the present wording of the law which undoubtedly stimulates separation and breakup of families.

Maryland's best attempt to resurrect some congressional history support comes from the often cited statement that AFDC-UF was not intended for those "more or less voluntarily unemployed and who are refusing work."[17] This statement, however, was made in a very specific context. It refers only to a desire by Congress not to give benefits to a person who refuses bona fide job offers once he is unemployed and thereby remains voluntarily unemployed. Thus, "voluntary unemployment" in this context looks not at how the worker left his last job, but rather at his willingness to accept suitable new employment.

This fact is borne out by the full statement by Representative Byrnes, a co-sponsor of the 1961 Bill, during the House debate:

> If you will look at the Bill on page two, you will find the additions made by the committee to assure that aid will only go to children of the involuntarily unemployed beginning at line nine, page two, and going to page three. That was added by the committee to assure that we will not be giving this relief to people who in a sense may be more or less voluntarily unemployed and who are refusing work.

107 Cong. Rec. 3767 (March 10, 1961).

The references in the first part of this statement are to methods of assuring that a parent will obtain suitable new employment. The state plans were to include cooperative arrangements with public employment offices, job placement services, and public vocational training programs, as well as a requirement that

[17]Statement of Rep. Byrnes, 107 Cong. Rec. 3767 (March 10, 1961). This statement appears in the Congressional Record on the page following Chairman Mills' statement regarding AFDC-UF for strikers. It is significant that Representative Byrnes failed to question Representative Mills' statement regarding striker eligibility.

recipients accept any bona fide job offer. Thus, the safeguards which Representative Byrnes supported in the 1961 version of the Act do not deal with voluntary termination of prior employment. Rather, they accept the unemployed father as they find him—regardless of how he lost his job—and then try to assure that he will not thereafter stay unemployed voluntarily.[18]

Further evidence of a total absence of intent to disqualify those who may have been found to have voluntarily left their last job is found in a section of the 1967 House Report which catalogues the various grounds under which a father could be disqualified from eligibility for benefits. The Act was intended to provide

> for denial of aid if and for so long as such a father fails to register, refuses without good cause to participate in a work and training program under such section 409, refuses without good cause to accept employment in which he is able to engage (which is offered to him from certain sources), refuses without good cause to undergo retraining under the vocational education program, or receives unemployment compensation.

H.R. Rep. No. 544, 90th Cong., 1st Sess. at 175. It would seem that this lengthy listing would have included a reference to those who had voluntarily left a prior job if Congress had really intended what Maryland claims.

A final look at another section of the Act reinforces the claimants' position. Even if it were assumed that Maryland is correct and section 407 intended to penalize those who were unemployed due to voluntarily

[18]Representative Byrnes further explained his understanding of the program in a subsequent statement, saying that the program would "include children who are in need, where the breadwinner is able to work, wants to work, and is just unable to get it." 107 Cong. Rec. 3768 (March 10, 1961).

leaving prior employment, that penalty would only be temporary. The Act requires that

> such father has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment. . . .

42 U.S.C. §607(b)(1)(B). The H.E.W. regulation defines this penalty period as a "30-day period prior to the receipt of such aid. . . ." 45 C.F.R. §233.100(a)(3)(ii). Therefore, in order to be eligible for AFDC-UF in this respect, a father must have not refused a bona fide job offer for a 30-day period. After refusing such an offer, he could again make himself eligible if a new 30-day period passed without such a job refusal. Thus, this penalty is only temporary and results in a 30-day disqualification, not a permanent one.

The claimants concur with the *Francis I* court's observation that the final legislative intent was not clearly evinced by legislative debate.[19] The burden of convincing this Court of a contrary intention lies, however, with the petitioners. On its face the Act covers the children of "unemployed" fathers. The fathers in claimants' classes are indeed unemployed and out of work. Because their family members are facially included within the Act's coverage,

> a participating State may not deny aid to persons who come within it in the absence of a clear indication that Congress meant the coverage to be optional.

Burns v. Alcala, supra, 420 U.S. at 580. At the very least, claimants have established an absence of such a clear intent. Accordingly, they are entitled to the Act's coverage.

[19]*See* 340 F.Supp. at 366 (J. App. 24a).

CONCLUSION

For the several reasons set forth above, the judgment of the Fourth Circuit should be affirmed.

Respectfully submitted,

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